

Visiting Nurses Association of Metropolitan Atlanta, Inc. and United Food and Commercial Workers, Local Union No. 1063, Petitioner and Georgia Nurses Association, Inc. Case 10-RC-14308

July 18, 1994

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND DEVANEY

The National Labor Relations Board, by a three-member panel, has considered a determinative challenge in an election held on December 18, 1992, and the hearing officer's report recommending disposition of it. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 43 votes for the Petitioner, 1 vote for the Union, and 40 votes cast against representation, with 2 determinative challenged ballots.¹

The Board has reviewed the record in light of the exceptions and briefs and adopts the hearing officer's rulings, findings, and conclusions only to the extent consistent with this decision. For the reasons stated below, we find, contrary to the hearing officer's recommendation, that the Petitioner's challenge to the ballot of Iris Mead should be sustained.

A. Findings of Fact

The facts are undisputed. Polling for the December 18, 1992 election took place from 7:30 to 10 a.m. at the Employer's Atlanta, Marietta, Lawrenceville, and College Park, Georgia facilities. Mead, who is a registered nurse employed by the Employer to provide nursing care to individuals in their own homes, visited patients and administered a blood test to one of the patients during the morning of the election. At approximately 9:10 a.m., she dropped off the blood test at the DeKalb General Hospital. On leaving the hospital at around 9:15 a.m., she drove to the Employer's Lawrenceville facility, where she intended to vote. The trip took 5 to 10 minutes longer than usual because of heavy traffic, and Mead arrived at the Lawrenceville facility at approximately 9:45 a.m.

As Mead entered the parking lot, she was paged by her supervisor, Barbara Ferris.² Mead went to Ferris'

office and had a short conversation with Ferris. Ferris asked Mead if she had voted, and when Mead responded that she had not, Ferris said that she could go vote if she wanted. Rather than proceeding directly to the voting area, Mead went to her desk, put down her belongings, "chit-chatted" with one or two of the clerks "for a couple of minutes" and "may have looked at something on the desk" before she went to the voting area.

Mead arrived at the polling area after the Board agent had closed the polls and as the Board agent and the two election observers were leaving the area with the sealed ballot box.³ After consultation with the election observers, the Board agent told Mead that the polls were closed and that if she wanted to vote, it would be by challenged ballot. Mead responded that "if it had been important to me I would have been [t]here."⁴ Mead cast her challenged ballot, and the ballot box was again sealed.

B. Discussion

In *Monte Vista Disposal Co.*, 307 NLRB 531 (1992), the Board announced a new rule that an employee who arrives at the polling place after the designated polling period ends shall not be entitled to have his or her vote counted in the absence of "extraordinary circumstances," unless the parties agree not to challenge the ballot. The Board noted that "extraordinary circumstances shall include a showing that one of the parties was responsible for the voter's late arrival." Applying *Monte Vista* to the instant proceeding, the hearing officer found that the incidents that occurred prior to Mead's voting constituted "extraordinary circumstances" warranting overruling the challenge to her late ballot. We disagree.

It is undisputed that Mead arrived at the Lawrenceville facility at approximately 9:45 a.m., 15 minutes before the polls closed. Although on her arrival she received and answered her supervisor's page, it is further undisputed that her conversation with her supervisor was brief and that when she informed her supervisor that she had not yet voted, her supervisor told

¹ The Petitioner subsequently withdrew its challenge to the ballot cast by Claudia S. Butler. Because of our finding to sustain the challenge to the ballot cast by Iris Mead, Butler's ballot is no longer determinative to the outcome of the election.

² Mead testified without contradiction that the Employer has no stated policy regarding the timeframe in which an employee should respond to a page, and that, although a supervisor could indicate if the page involved an emergency situation and should be answered immediately by the employee, Ferris had never used the emergency procedure.

³ Susan Shirley, the Employer's team director, testified that Mead arrived at the polls no later than "one minute and 40 seconds" after the polls closed. Rhonda Sheridan, the Petitioner's observer, testified that Mead arrived "7 or 8 minutes" after the polls closed.

In its answering brief, the Union contends that the Board agent closed the polls before 10 a.m. and that, in fact, Mead did not arrive late at the polling area. In light of the fact that the Petitioner did not file exceptions to the hearing officer's report, this issue is not before us. In any event, it is established Board policy that the Board agent conducting the election selects the official timepiece by which the polls are opened and closed, and it is undisputed that Mead arrived after the Board agent had closed the polls as indicated by the official timepiece. See NLRB Casehandling Manual (Part Two) Representation Proceedings, secs. 11320 and 11324.

⁴ Mead testified that voting "was not my priority of the day. It did not matter a whole lot to me whether I voted or not."

her she should go and vote if she wanted. The hearing officer did not find, nor does any party contend, that at that point, had Mead chosen to proceed to the voting area, she would have arrived after the polls closed.⁵

Rather than proceed directly to the polling area, Mead chose to go to her desk, put down her belongings, talk to one or two clerks for several minutes, and look at something on her desk—all before she proceeded to the polling area. Under these circumstances, Mead's late arrival at the polls was caused not by her supervisor's page, but rather by her voluntary choice not to proceed directly to the polling area.⁶ As the Board has stated, "[O]nce the election has been held there is no more reason to negate the results . . . because of personal matters affecting the opportunity of individual employees to vote, than there would be in the case of a political election." *Versail Mfg.*, 212 NLRB 592, 593 (1974).

Accordingly, since we have found that Mead's late arrival at the polls was not attributable to "extraordinary circumstances" and since there was no agree-

⁵ Accordingly, we need not decide in this case whether such a showing would have established extraordinary circumstances.

Although the hearing officer made no findings about the distances between the parking lot, Ferris' office, Mead's desk, and the polling area, nor the time that it took to walk between these various points, it is undisputed that the distances and times involved are small. In this regard, the Employer introduced an affidavit of Edward Chambers, the Petitioner's representative, which stated that the distance between the parking lot and the receptionist's desk was less than a 2-minute walk and that it was less than a 30-second walk from Ferris' office to the polling area. Shirley testified that it was about a 10-second walk from the receptionist's desk to the polling area.

⁶ While not determinative, Mead's comments to the Board agent and to employees indicating that voting was not a high priority of hers further support our finding that the Employer was not responsible for her tardiness.

ment not to challenge her ballot, we sustain the challenge to her ballot and find that a certification of representative should be issued. See *Taylor Cadillac, Inc.*, 310 NLRB 639 (1993).

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for United Food and Commercial Workers, Local Union No. 1063, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit.

All regular full-time and regular part-time Staff Nurses employed by the Employer, who were employed during the pay roll period ending November 27, 1992, but excluding all Special Services Nurses, Nurse Practitioner of Employee Health Clinic, Community Liaison Nurse, Community Care Coordinator, Weekend Nurse, Enterostomal Therapy Nurse, AIDS Health Services Coordinator, Data Processing Liaison, Utilization Review/Education Specialist, Friendship Center Nurse, Utilization Review Nurse, Nurse Trainer, Pediatric Nurses, Infusion Team Nurses, Hospice Nurses, PRN's and Supervisors as defined in the Act.

MEMBER DEVANEY, dissenting.

I dissent from my colleagues' reversal of the hearing officer's report. For the reasons set forth in my dissenting opinion in *Monte Vista Disposal Co.*, 307 NLRB 531 (1992), and inasmuch as Mead arrived to vote shortly after the polls were scheduled to close and cast her ballot before the ballot box had been opened, I would adopt the hearing officer's recommendation to overrule the challenge to Mead's ballot.